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IN THE

Supreme Court

of the United States

October Term, 1943

No 460

C. D. ROBINSON, as administrator de bonis non of the Estates of Edward S. Ross and Mary C. Ross, deceased,

Petitioner,

vs.

LINFIELD COLLEGE, a corporation, STATE OF WASHINGTON and LEONA P. SANDERSON,

Respondents.

BRIEF OF RESPONDENT LINFIELD COLLEGE IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

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Our main purpose, in this brief, is to direct attention to some facts which affect certain statutes of the State of Washington, referred to by petitioner as limitation statutes, and which he claims were tolled due to the alleged non-residence of Frances E. R. Linfield, deceased, and Linfield College (Petitioner's brief 25, 26, 27). A few other considerations will be noticed very briefly.

There were two so called statutes of limitation relied upon by respondents, Sec. 156 and Sec. 788, Rem. Rev. Stat. of Wash.

Section 156 is as follows:

> "1. Actions for the recovery of real property, or for the recovery of the possession thereof; and no action shall be maintained for such recovery unless it appear that the plaintiff, his ancestors, predecessor or grantor was seized or possessed of the premises in question within ten years before the commencement of the action."

Section 788 is as follows:

> "Every person in actual, open and notorious possession of lands or tenements under claim and color of title, made in good faith, and who shall for seven successive years continue in possession, and shall also during said time pay all taxes legally assessed on such lands or tenements, shall be held and adjudged to be the legal owner of said lands or tenements, to the extent and according to the purport of his or her paper title. All persons holding under such possession, by purchase, devise or descent before said seven years shall have expired, and who shall continue such possession and continue to pay the taxes as aforesaid, so as to complete the possession and payment of taxes for the term aforesaid shall be entitled to the benefit of this section."

These are the statutes referred to in the opinion of the Circuit Court of Appeals. Section 156 is found in Chapter 3, Title 2, Rem. Rev. Stat., which is entitled "Limitation of Actions". Section 788 is found in Chapter 1, Title 6, Rem. Rev. Stat., which is entitled "Actions for Possession of and Acquiring Title to Real

Property". Section 168, Rem. Rev. Stat., quoted by Petitioner at page 25 of his brief, and which purports to toll the time for the commencement of actions, is a part of the limitation statute, while Section 788 is not strictly a limitation statute, but is one enacted for the purpose of setting titles at rest and was passed in 1893, being a part of Chapter XI of the 1893 Laws of Washington, and entitled "Quieting Titles and Confirming Titles to Land."

If we should assume that, insofar as Section 156 is involved, the commencement of the action might be tolled under the provisions of Section 168, nevertheless said last mentioned section would not in any manner affect the bar by lapse of time under the seven year statute, Section 788. This is recognized in the decisions cited by petitioner at page 25 of his brief (Ilse vs. Aetna Indemnity Co., 69 Wash. 484, 125 Pac. 780, and Eagles vs. General Electric Co., 5 Wash. (2d) 20, 33, 104 Pac. (2d) 968.) This is very carefully explained in the Eagles case at pages 33, 34 and 35.

So far as we are aware, the Supreme Court of Washington has never held, that, even where there is involved the ten year statute, Sec. 156, that absence from the State tolls the operation of such statute, in an *in rem* action. It is not so decided in either the Ilse or the Eagles cases.

This action is one *in rem*, and jurisdiction may be acquired under the Washington statute, in such actions, by publication of summons. Sec. 228 Rem. Rev. Stat.

Under such situation non-residence was of no importance. 34 Am. Jur. 179, Sec. 223. Furthermore, the corporation statute of Washington required foreign corporations, doing business in that state, to appoint a resident agent for the purpose of service of process. Rem. Rev. Stat. of Wash., Sec. 3854. Presumably the law was obeyed. 20 Am. Jur. 221, Sec. 226. There has been no claim it was not.

The tolling statute, Sec. 168, could not by any stretch of the imagination affect the doctrine of laches.

There are many inaccurate statements in petitioner's brief, but only two will be noticed. At page 8 it is stated that Frances E. R. Linfield was a trustee for petitioner from January 2, 1915, to March 26, 1940. On the same page it is then stated that such fact was admitted by appellant. There is no such fact and no such admission and there is no finding there was any trust relationship. A trust relationship on the part of Mrs. Linfield was denied. It was found, however, that Mrs. Linfield served as a director of Ross Holding Company from January 2, 1915 to January 15, 1918. (R. 96)

The main facts, stated chronologically, and which are shown by the findings made by the District Judge, are as follows: (1) The deed, which is questioned, was executed October 4, 1916, and recorded 25 years before this action was commenced. (2) That deed was executed by the ones who were financially interested in the grantor, Ross Holding Company. Mrs. Linfield had no interest. (3) Mrs. Linfield paid a consideration in ex-

cess of the value of the property, and the income from the property was about $2000 less annually than the carrying charges. (4) No part of the consideration has ever been returned or tendered. (5) There was no secrecy in the transaction. (6) The corporation had authority to deed, and no law was violated. (7) The deed was not *ultra vires* the corporation. (8) There was no fraud or overreaching. (9) The directors who executed the deed consulted with the corporation's attorneys about the year 1918 on the question of attempting to set the deed aside. (10) A receiver was appointed over Ross Holding Company in January, 1918, and it does not appear such receiver has ever been discharged. (11) In the spring of 1918, Mrs. Linfield wrote a letter to the receiver, stating that she understood the deed was being questioned, and offered to reconvey the property if she was made whole for her outlay. (12) The receiver investigated the transaction and refused the tender, because it concluded there was no value in excess of what Mrs. Linfield had paid. (13) The deed to Linfield College was executed, delivered, and recorded in the spring of 1922, more than 18 years before this action was commenced. (14) All persons in interest, from that time, had actual notice of all material facts. (15) Linfield College acquired title in good faith, without notice and for a valuable consideration. (16) Lee Hammond, through whom respondent, Leona P. Sanderson acquired title, acquired his contract of purchase in good faith and for a valuable consideration in 1928. (17) In 1922 and at various other times thereafter, those interested as heirs of the Rosses made demands

on Mrs. Linfield and Linfield College for the property, which were refused by Linfield College, which claimed title. (18) Mrs. Linfield, and her successors in title, have been in possession and paid all taxes and assessments since October 4, 1916. (19) Subsequent persons interested in the title made improvements at a cost of $42,500, relying upon the title. (20) Mrs. Linfield and all parties to the transaction of October 4, 1916, died before the commencement of this action.

All of these facts are shown by the findings, and the District Judge in its conclusions and decree determined that there was no equity in petitioner's case, and that any right to question the deed of October 4, 1916, had been lost due to ratification, limitation statutes, the seven year tax statute, and laches.

Respectfully Submitted,

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